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Supreme Court of the United States.

OCTOBER TERM, 1974.

No. 75-99

PARLANE SPORTSWEAR CO., INC.,
PETITIONER,

v.

SECRETARY OF HEALTH, EDUCATION AND WELFARE, ET AL.,
RESPONDENTS.

Petition for a Writ of Certiorari to the United States Court of Appeals for the First Circuit.

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Corrigenda.

Page 1, last two lines. Appendix A, *infra,* pp. 23-28 should read Appendix B, *infra,* pp. 29-32.

Page 2, line 2. Appendix B, *infra,* pp. 29-32 should read Appendix A, *infra,* pp. 23-28.

Page 2, line 5. Appendix A, p. 23 should read Appendix B, p. 29.

Page 4, last line. App. A., p. 26 should read App. B, pp. 30-31.

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Petition for a Writ of Certiorari to the United States Court of Appeals for the First Circuit.

To the Honorable, the Chief Justice, and the Associate Justices of the Supreme Court of the United States:

The petitioner, Parlane Sportswear Co., Inc., prays that a writ of certiorari issue to review the opinion and judgment of the United States Court of Appeals for the First Circuit rendered in these proceedings on April 17, 1975.

Opinions Below.

The opinion of the Court of Appeals for the First Circuit, as yet unreported, appears as Appendix A, *infra,* pp. 23-28. The opinion of the United States District

Court for the District of Massachusetts is reported at 381 F. Supp. 411, and appears as Appendix B, *infra*, pp. 29-32.

Jurisdiction.

The judgment of the United States Court of Appeals for the First Circuit was entered on April 17, 1975. See Appendix A, p. 23 *infra*. This petition for certiorari was filed less than 90 days thereafter. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

Questions Presented.

1. Whether the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. §§ 4601 *et seq.*, requires relocation assistance payments by the United States Government to persons displaced by federally funded projects undertaken by a private entity.

2. Whether the recipient of a Federal grant from the Department of Health, Education and Welfare is a contractor within the meaning of Regulation 15.6 promulgated by said Department to implement the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, thereby obligating the United States Government to provide relocation assistance payments to persons displaced by such grant recipient for purposes of the grant.

Statute Involved.

This case arises under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. §§ 4601 *et seq.* (hereinafter the Act) which is set forth as Appendix C at pp. 33-58.

Statement of the Case.

A. Prior Proceedings.

This is an action in the United States District Court for the District of Massachusetts (District Court) by Parlane Sportswear Company, Inc. (Parlane), against Casper Weinberger, Secretary of the Department of Health, Education and Welfare (HEW), and the trustees of Tufts College, a/k/a Tufts University (Tufts), wherein Parlane seeks a declaration under 28 U.S.C. §§ 2201 and 2202 that it is entitled to Federal relocation assistance under the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. §§ 4601 *et seq.* The District Court by judgment entered on August 29, 1974, denied Parlane's motion for summary judgment and allowed HEW's and Tufts' motion to dismiss. Parlane appealed. Thereafter, the United States Court of Appeals for the First Circuit affirmed on April 17, 1975.

B. Facts.

Parlane had engaged in the business of manufacturing women's sportwear at 57 Kneeland Street in Boston since 1959. In 1969, Tufts purchased the building in which the business is located, but continued to lease the premises to Parlane.

By 1970 and 1971 a variety of programs had been established by acts of Congress to improve health care, treatment of diseases, training of health professionals and medical and research facilities. See, *e.g.*, 42 U.S.C. §§ 291 *et seq.*; 42 U.S.C. §§ 281 *et seq.* In 1971 and 1972, Tufts was awarded certain grants from the National Institutes of Health, a subsidiary division of HEW (NIH), by which it would participate in such programs. A special project training grant in the amount of $364,785 was awarded

under the Health Professions Educational Improvement Program; a similar grant in the amount of $990,365 was awarded in 1972. In 1972, Tufts received a grant in the amount of $1,174,169 under the Health Professions Capitation Grant Program. And, again in 1972, Tufts was awarded a Cancer Research Grant under its Cancer Research Grant Program. Under the terms of the grants Tufts is to provide additional teaching space, library space, a learning resources center, faculty research offices and laboratories as well as engage in research.

Upon receipt of the grants, Tufts undertook to evict Parlane from 57 Kneeland Street in order to use the space occupied by Parlane to fulfill the purpose of the grants. By agreement with Tufts, Parlane vacated one of the three floors which it occupied. Thereafter, in May, 1973, Tufts brought an action of summary process against Parlane and obtained a judgment for possession of the remaining two floors. Execution has issued, Parlane has vacated the premises and Tufts is currently occupying for the purposes of the grants.

Beginning in August, 1971, Parlane sought relocation assistance from HEW under the Act, but was refused any aid. Having exhausted all of its administrative remedies, Parlane brought this action seeking a declaration that it is entitled to relocation assistance under the Act.

Reasons for Allowance of the Writ.

A. The Court of Appeals Below Has Decided an Important Question of Federal Law Which Has Not Been, but Should Be, Decided by This Court.

The Court of Appeals below has ruled in summary fashion that the benefits of the Act are not to be accorded persons displaced by programs or projects of a Federal agency which are implemented by federally assisted projects of private entities. (App. A., p. 26.) As is demonstrated in part B, *infra*, that court's conclusion is directly contrary to Congress' stated purpose in passing the Act.

Moreover, the anachronistic result: *viz.*, that displacement of a business solely caused by a multi-million dollar Federal project will go uncompensated only because of an artificial distinction based upon whom the Federal agency chooses to implement its project has far reaching implications which may affect many thousands of similarly situated businesses throughout the country.

This appears to be the first case of its kind to be decided under the Act. The decision below, on an important question of Federal law, can therefor be expected to guide the decisions of other Federal courts in this area. The use of literally millions of dollars of Federal funds and the continued existence of thousands of businesses is at stake. Accordingly, the court below has decided an important question of Federal law which has not been, but should be, decided by this Court.

B. Parlane is Entitled to Relocation Assistance under the Act.

The overriding purpose of Congress in passing the Act was to protect all persons displaced by projects funded by the Federal government for the public welfare from disproportionate injury. See *Young* v. *Harder*, 361 F. Supp. 64 (D. Kan. 1973).

> "The purpose of this subchapter is to establish a uniform policy for the fair and equitable treatment of persons displaced as a result of Federal and federally-assisted programs *in order that such persons shall not suffer disproportionate injuries as a result of programs designed for the benefit of the public as a whole.*" 42 U.S.C. § 4621. (Emphasis added.)

Not only has Congress set forth a generous policy, but it has also defined a displaced person (including corporations; see 42 U.S.C. § 4601(5)) in sweeping terms as one who:

> ". . . on or after January 2, 1971, moves from real property . . . as a result of the acquisition of such real property, in whole or in part . . . for a program or project undertaken by a Federal agency or with Federal financial assistance. . . ." 42 U.S.C. § 4601(6).

HEW contends and the courts below ruled that under the operative sections of the Act only persons displaced directly by Federal agencies or by state agencies which receive Federal financial assistance are entitled to receive relocation assistance. HEW asserts and the District Court found that the operative sections exclude from coverage persons "displaced by a private entity that has a grant of Federal financial assistance." (App. A., p. 26).

The Court of Appeals stated: "HEW's regulations refer to 'direct projects of the Department,' 45 C.F.R. § 15.5(a), and deny aid to persons displaced by federally assisted projects of private entities, 45 C.F.R. § 15.6. We find no compelling indications that HEW's contemporaneous construction of the statute is wrong [Footnote omitted]." (App. B, p. 30.)

In arriving at its decision the District Court below referred to a number of so-called operative sections of the Act. It stated that "Sections 4622, 4627 and 4628 direct that displacement payments be made when the real property is acquired '. . . for a program or project undertaken by a Federal agency' " (App. A, p. 25).

It referred to § 4630 as the basis for relief when a state agency conducts a program or project with Federal monies. The court then concluded that there is no "operational provision calling for payments to a person, such as the plaintiff, who is displaced by a private entity that has a grant of Federal financial assistance for its project." (App. A, p. 26).

However, analysis of these sections does not lead to the conclusion which the District Court reached and the

Court of Appeals affirmed. To the contrary, proper statutory construction establishes that the work undertaken by Tufts with grants from HEW constitutes a Federal program under § 4621, or "a program or project undertaken by a Federal agency in any State" under § 4622(a).

On the face of the statute there is no language which limits the definition of "a program or project of a Federal agency" to one which is conducted exclusively by the employees of the agency. There is no language requiring direct, immediate and continuous daily supervision of a program or project to make it qualify as "a program or project of a Federal agency." There is no language excluding from the definition of "a program or project of a Federal agency" an undertaking by a university with millions of dollars of Federal money. Since the statute does not so narrowly define a Federal program or project, the court below erred in excluding Parlane from the protection of the Act.

Given the sweeping declarations of Congressional purpose to compensate persons displaced as a result of Federal and federally assisted programs, and given the broad definition of displaced person contained in the Act, the District Court should have interpreted the term "Federal program or project" so as to effectuate the stated purpose.

> "Indeed the proper course in all cases is to adopt that sense of the words which promotes in the fullest manner the policy of the legislature in the enactment of the law, and to avoid a construction which would alter or defeat that policy." 73 Am. Jur. 2d, *Statutes*, § 153.

In the case of *Markham* v. *Cabell*, 326 U.S. 404 (1945), for example, this Court ignored a statutory provision which would have restricted an otherwise broad and generous purpose. *Markham* was an action brought under the Trading With the Enemy Act, 50 U.S.C. App. §§ 1 *et seq.*

Section 9(a) of that statute provided that "any person not an enemy or ally of enemy claiming any interest, right, or title in any money or other property which may have been conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian . . . may file with the said custodian a notice of his claim. . . ." Section 9(a), however, limited the debts subject to collection to those owed prior to October 6, 1917.

In *Markham* the plaintiff sought to collect a debt which arose during World War II. The Alien Property Custodian refused to allow it because it was not owed prior to October 6, 1917. In rejecting the Custodian's claim that the plaintiff was excluded from the protections of the statute, the Court looked to the Congressional declaration of policy.

> "The policy as well as the letter of the law is a guide to decision. Resort to the policy of a law may be had to ameliorate its seeming harshness or to qualify its apparent absolutes as *Holy Trinity Church* v. *United States,* 143 U.S. 457 illustrates. The process of interpretation also misses its high function if a strict reading of a law results in the emasculation or deletion of a provision which a less literal reading would preserve." 326 U.S. at 409.

Further, when a statute is remedial, humanitarian or beneficial, a strict or narrow interpretation is inappropriate. Rather, it ". . . is to be construed liberally, and so as to effectuate the purpose of Congress and secure the relief which was designed. . . ." *Logan* v. *Davis,* 233 U.S. 613, 628 (1914); see also *United States* v. *Colorado Anthracite Co.,* 225 U.S. 219, 223 (1912); *New York, New Haven & Hartford Railroad Co.* v. *Interstate Commerce Commission,* 200 U.S. 361, 391 (1906).

> "A remedial statute should be construed so as to afford all the relief within the power of the court which the language of the act indicates that the legislature intended to grant. In this respect, it has been declared that the remedy should be extended as far as the words of the statute permit, and it is not unusual to extend the enacting words of a remedial statute beyond their literal import and effect in order to include cases within the same mischief, or within the reason of the statute. Indeed, in the construction of statutes, the intention of a remedial statute will prevail over the literal sense of its terms, and therefore when the expression is special or particular, but the reason is general, the expression should be deemed general. Words may be omitted, or may be supplied by implication, and sentences transformed, to render the statute a consistent whole and effectuate the legislative will." 73 Am. Jur. 2d, *Statutes,* § 279.

Surely, a liberal but reasonable interpretation of the term "program or project of a Federal agency" necessarily includes the massive grants by HEW to Tufts which occasioned the displacement of Parlane. It would be truly anomalous for Parlane to suffer such disproportionate injury on account of HEW's humanitarian programs given the stated policy of the Act. The inequity is even more evident when one considers that Parlane unquestionably would be entitled to relocation assistance were Tufts a state university.

The court below considered the legislative history of the Act in determining who is entitled to its benefits. However, it is well settled that when a statute is unambiguous a court cannot look to the legislative history to ascertain its meaning. *Ex parte Collett,* 337 U.S. 55, 61 (1949). Here, the declaration of Congressional policy is unambig-

uous; it would extend benefits to all persons displaced by any federally-financed programs. Moreover, the Act in defining a displaced person includes those persons dislocated by any federally-assisted program. Therefore, resort to legislative history is inappropriate.

Nonetheless, it is submitted that the legislative history does nothing to exclude Parlane from the protection of the Act. The history of the Act was complex and tortured; the Act was liberally amended prior to passage and emerged a synthesis of many divergent points of view. *Barnhart* v. *Brinegar*, 362 F. Supp. 464 (W.D. Mo. 1973). Thus it is difficult to divine any clear statement of legislative intent.

Yet, certain indicia of support for Parlane's claim for relief can be discerned. There is a declaration of intent in the Report of the House which is as broad as that found in the Act itself. "This bill, as reported, is reported unanimously. It is a comprehensive effort to provide equitably for *all persons affected by Federal or federally assisted programs.*"[2] Report, 5850. (Emphasis added.)

Furthermore, Congress, in passing the Act, broadened the definition of displaced person set forth in the Report from one dislodged as a result of a project "undertaken by a Federal agency, or by a State agency with Federal financial assistance," Report, p. 5853, to one dislodged as a result of a "program or project undertaken by a Federal agency, or with Federal financial assistance." 42 U.S.C. § 4601(6). In so doing, Congress manifested an intent to expand rather than restrict the protection of the Act.

[2] The Report of the House is set forth at United States Code, Cong. and Admin. News, 91st Congress, 2d Session, vol. 3, pp. 5850-5875, herein cited as Report.

A section-by-section examination of the Report might imply limits on the definitions of Federal projects and federally-assisted programs. See opinion of the District Court, App. A, p. 23. This type of analysis is inappropriate to interpret a statute where there is an explicit declaration of Congressional intent.

In the case of *United States* v. *Seeger*, 380 U.S. 163 (1965), the meaning of the term "religious training and belief" within the Universal Military Training and Service Act, 50 U.S.C. §§ 451 *et seq.*, was in question. In arguing against the granting of conscientious objector status the Government referred to the Senate report which cited a case containing a restrictive definition of religious belief. In replying to the Government's argument, the Court said:

> "First, we think it clear that an explicit statement of congressional intent deserves more weight than the parenthetical citation of a case which might stand for a number of things." 380 U.S. at 177.

Thus, resort to the legislative history of the Act does not support the restrictive interpretation given it by HEW and endorsed by the District Court.

It was argued below that the Act fails to specifically set forth the case in which a Federal agency funds a private entity to conduct a program or project to accomplish an objective of the Federal government, and in so doing precludes a court from judicially including such a case. This argument, the so-called *casus omissus* theory, see *Ebert* v. *Poston*, 266 U.S. 548, 553-554 (1925), begs the question here. It assumes that one in the position of Parlane has been omitted and cannot now be granted coverage by decision of the Court. However, it denies the Court its right and obligation to interpret the statute in the

light of its declaration of policy, and thereby find Parlane entitled to relocation assistance.

To buttress its argument HEW offered remarks by Congressman William F. Ryan of New York to the effect that ". . . the problem of displacement by private institutions through federally-assisted programs requires a legislative solution." Congressional Record, 91st Congress, 2d Session, vol. 116, Part 31, p. 41255. However, the individual opinions of legislators are of little value in ascertaining legislative intent. *Railroad Retirement Board* v. *Duquesne Warehouse Co.*, 149 F. 2d 507 (D.C. Cir. 1945), aff'd 326 U.S. 446 (1946).

Evidence that there was no legislative oversight is found in the history of amendatory legislation. The Committee on Public Works, House of Representatives, 93rd Congress, 1st Session, Report No. 93-747, states:

> "Two projects have come to the attention of the Committee *in which the original intent of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 is being violated.* . . .
>
> "The second case involves the National Cancer Institute Research Center Grant . . . awarded to Tufts University . . . where long time tenants of the University are being displaced to make room for a Federally assisted program." (Emphasis added.)

Further, S. 261, entitled "An Act to Amend the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 to Provide for minimum Federal payments for four additional years, and for other purposes," which passed the Senate on February 2, 1973, states:

> "SEC. 3. Notwithstanding any other provision of law, any person who moves or relocates his place of business currently located at 57 Kneeland Street, Boston, Massachusetts, as a result of a National Cancer Institute Research Center Grant 1-PO2-CA12924-01, awarded to Tufts University, shall be deemed to be a displaced person and eligible for assistance under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970."

These statements by Congress are strong evidence that projects such as those in which Tufts is participating with Federal financial assistance are included under the Act as programs or projects of a Federal agency in a state or as federally-assisted programs. No attempt is made to broaden the coverage of the Act; instead it is asserted that the Act, in its present form, protects Parlane.

It is manifest that the activities undertaken by Tufts with the NIH grants constitute a Federal program or project in the state of Massachusetts. Each grant is in furtherance of a specific governmental program established by acts of Congress. In 1971 and 1972 Tufts was awarded a Special Project Grant from the Health Professions Educational Improvement Program of the National Institutes of Health in the amounts of $364,785 and $990,365 respectively. In 1972 Tufts received an additional grant under the Health Professions Capitation Grant Program in the amount of $1,174,169. Both of these programs were created by HEW to implement the legislative directives of the Health Professions Educational Assistance Act, 42 U.S.C. §§ 292 *et seq.*

That statute sets forth a national policy to improve and increase medical research and training.

> "(a) The Congress finds and declares that (1) the Nation's economy, welfare, and security are adversely affected by many crippling and killing diseases the prevention and control of which require a substantial increase, in all areas of the Nation, of research ac-

tivities in the sciences related to health, and (2) funds for the construction of new and improved non-Federal facilities to house such activities are inadequate.

"(b) It is therefore the purpose of this part to assist in the construction of facilities for the conduct of research in the sciences related to health by providing grants-in-aid on a matching basis to public and nonprofit institutions for such purpose." 42 U.S.C. § 292.

It further appropriates and makes available by grants-in-aid more than $500,000 of Federal money to fulfill its purpose. 42 U.S.C. §§ 292(c), 293.

Additionally, in 1972 Tufts was awarded a Cancer Research Grant on a renewing basis in the aggregate amount of $8,667,707. By the terms of the grant, the money is to be used for six itemized objectives:

"Tufts University proposes to establish a Cancer Research Center which will be a major *regional resource* for the attack on cancer. Ultimately it will include: 1) the establishment of a specific geographic location for *clinical* and *laboratory research* into the *human cancer* problem, especially as relates to patients with advancing malignancies; 2) to utilize the center as a focal point for the integration of various therapeutic measures in an effort to create an effective *interdisciplinary approach* to the patient with cancer; 3) to bring together research-oriented individuals of different backgrounds and interests to work in a common geography, sharing experiences and ideas for promoting cancer investigation, and to provide a facility for the rapid translation of research data into clinical use; 4) to utilize the center for teaching purposes for TUFTS medical students and for house officers associated with the teaching hospitals; 5) to create

a central location for efforts in cancer research, both clinical and laboratory, to which the various teaching hospitals can turn for information, for participation, and for teaching purposes, and 6) to provide a platform for growth of community-oriented programs." (Emphasis in original.)

It is self-evident that these various programs were not created by Tufts. Rather, Tufts responded to the opportunity to participate in Federal programs created by acts of Congress and implemented by HEW. Thus, Tufts' activities in connection with the grants must be held to be a part of "a program or project undertaken by a Federal agency." 42 U.S.C. § 4625. To accept the ruling to the contrary disregards the legislative directives that medical training, research, treatment and facilities be provided through the Department of Health, Education and Welfare. Further, and more fundamentally, the ruling erroneously requires a delineation between the activities of a Federal agency in designing and administering a program or project and those activities by which the program or project is conducted.

Consider the construction of an interstate highway. Congress has determined that a network of Federal highways is a national priority. It appropriates funds and authorizes a Federal agency, the Department of Transportation, to use those funds to carry out that national purpose. Ultimately, private businesses engaged in the construction of the highways. Persons displaced by the construction are unquestionably entitled to relocation assistance under the Act.

There is no conceptual distinction between the highway situation and the instant case. Congress has determined that the improvement of health care and cancer research is a national priority. It has appropriated funds and authorized a Federal agency, the Department of Health,

Education and Welfare, to use those funds to carry out that national purpose. Ultimately, Tufts will engage in the improvement of health care and in cancer research. But for the grants to Tufts, Parlane would not have been displaced. Why, then, is Parlane not entitled to relocation assistance under the Act?

We are mindful of the case of *Wahba* v. *New York University*, 492 F. 2d 96 (2d Cir. 1974), in which the court found insufficient governmental action to invoke the application of First Amendment due process rights in the dismissal of a university employee working on a federally-funded research project. It may be argued on the basis of *Wahba* that Tufts' activities under the grants do not constitute programs or projects of the Federal government within the Act. *Wahba*, however, is inapplicable to the case at bar.

Wahba involved the application of constitutional strictures to the employment practices of a private university. Dr. Wahba contended that because he was working on a project which was partially funded by a Federal agency, he was entitled to a hearing and other due process rights prior to dismissal despite the fact that his salary did not come from Federal funds. In rejecting Dr. Wahba's claims the court limited its decision to the facts before it.

> ". . . we do not find decisions dealing with one form of state involvement and a particular provision of the Bill of Rights at all determinative in passing upon claims concerning different form of government involvement and other constitutional guarantees." *Wahba*, 492 F. 2d at 100.

Further, the court set out a weighing test for the determination of government action, but it limited discussion to cases involving the application of constitutional requirements to the private sector. *Wahba*, 492 F. 2d at 102.

Comparison of this case to *Wahba* demonstrates the great disparities between the two in all aspects. *Wahba* was a private action for damages against the university for "his dismissal from the research project, or for the University's failure to renew his one-year contract without according him a due process hearing, or for both." 492 F. 2d at 98. This case is an action to determine eligibility for relocation assistance authorized by act of Congress. *Wahba* involved the internal workings of a university-run research project and the injury to one who elected to participate in that project. This case involves the administrative act of a Federal agency and the injury to an "innocent by-stander" occasioned by a Federal project. In *Wahba* the court saw a possibility of harm ". . . in loading a basic research program with the full panoply of First Amendment and Fifth Amendment due process rights." 492 F. 2d at 103. Here, the payment of relocation assistance to Parlane by HEW poses no threat of harm or curtailment to Tufts' activities.[3] Finally, *Wahba* involved provisions of the Bill of Rights; the instant case involves remedial legislation and a Congressional directive to compensate all persons displaced by Federal and federally-assisted projects.

It is therefore apparent that Parlane is entitled to relocation assistance under the Act. The sweeping statement of Congressional purpose in passing the Act includes Parlane within its boundaries. Federal programs established under health, medical and cancer training and research legislation do not delineate between public and private

[3] We are cognizant of the argument advanced by Tufts that the payment of relocation assistance would reduce the size of the grant to Tufts by a comparable amount. However, had Tufts applied to HEW for assistance to Parlane as part of its grant application, it would not stand to suffer any loss of grant funds.

participation in their implementation. Thus, Tufts' activities under the grants are parts of projects undertaken by HEW and Parlane's relocation costs must be reimbursed.

C. Parlane is Entitled to Relocation Assistance under HEW Regulations.

Pursuant to th Act, 42 U.S.C. § 4633(b), HEW has promulgated regulations governing eligibility for relocation assistance. 45 C.F.R. §§ 15.2 *et seq.* Although the regulations approximate the Act in many respects, *e.g.*, definitional sections, they draw certain distinctions which are inimical to the Act itself.

Section 15.5, entitled Applicability, uses the term "direct project" of the Department.

> "(a) This part applies, in relation to title II of the Act, to all direct projects of the Department which have resulted in or will result in the displacement of persons or, in relation to title III of the Act, which have resulted in or will result in the acquisition of real property.
>
> "(b) This part applies, in relation to title II of the Act, to all projects of State agencies receiving financial assistance in whole or in part from the Department which projects have resulted in or will result in the displacement of persons or, in relation to title III of the Act, which have resulted in or will result in the acquisition of real property. For this purpose, it is immaterial whether Federal funds are used by the State agency for the acquisition of such real property as is required for, or as a direct result of, the project."

It is here that HEW draws a distinction between public and private participation in Federal programs and projects. It designs a distinction not made by the Act and then writes regulations to reinforce the distinction. The very next regulation, § 15.6, carries out the division by segregating work done by a private entity from a Federal program or project.

> "§ 15.6 Categorical exceptions.
>
> "This part does not apply to federally-assisted projects of those entities, such as private entities, that do not meet the definition of a State agency in § 15.4(s), except when such an entity is acting as an agent or contractor of a State agency, or of the Department, in the discharge of its responsibilities."

In light of the arguments advanced in section B *supra*, it is maintained that the distinction is an invalid one in relation to this action. Just as a regulation may not enlarge the scope of a statute, *United States* v. *United Verde Copper Co.*, 196 U.S. 207 (1905), *Campbell* v. *Galeno Chemical Co.*, 281 U.S. 599 (1930), it may also not restrict the scope of coverage afforded by a statute. *United States* v. *Braddy*, 320 F. Supp. 1239 (D. Ore. 1971).

Thus, Tufts' participation in Federal projects can not be excluded from the meaning of "program or project undertaken by a Federal agency" by resort to a regulation.

Assuming, however, for the sake of argument, that Tufts is a private entity receiving Federal assistance and, therefore, subject to potential exclusion by the regulation, it is nonetheless certain that Tufts, as a grant recipient, would be a contractor of HEW and as such would be included within the scope of the regulation and the Act. It has long been held that, for purposes of legal analysis, a grant is a contract. *Dartmouth College* v. *Woodward*, 4 Wheat. 517 (1819); *United States* v. *County School Board*

of Prince George County, 221 F. Supp. 93 (E.D. Va. 1963); *United States* v. *Sumter County School District No. 2*, 232 F. Supp. 945 (E.D. S.C. 1964).

Moreover, legal commentators have uniformly concluded that it is essential that grants, even for research projects, be considered contracts. See Wilcox, *The Function and Nature of Grants*, 27 Admin. L. Rev. 125, 128-131 (1970). Conway, *The Federal Grant: An Administrative View*, 30 Fed. B. J. 119 (1971).

> "Viewing the contract as an exchange of promises which is in some manner enforceable, the conclusion is inescapable that 'grants', as that term is used to describe instruments appropriate for supporting undirected research projects, are contracts. The Government promises to pay money in return for the recipient's promise to perform research in furtherance of an agency's mission. The recipient undertakes to use the funds paid him for the purpose of pursuing such research and the Government undertakes not to interfere with such pursuit. Upon breach of that undertaking by the recipient, the Government may revoke its promise, withhold payment or demand restitution. Likewise, the grantee who keeps his end of the bargain would appear to have a corresponding right to compel the Government to make the promised payment; however, this point seems never to have been adjudicated.
>
> "Acknowledging that research project grants are contracts should not in itself make the word 'grant' disappear. If use of the word 'grant' may have generated more heat than light during the past decade, the fault lies not with the word itself. The term 'grant' is itself not especially meaningful. Its relevance is dependent on the manner in which it is applied and the use to which it is put. Regretfully, in the hands of many of those charged with applying

> the term, the word 'grant' has assumed so many conflicting attributes, and has become so distorted, that the purposes for which it may have been designed have been lost." Grossbaum, *Federal Support of Research Projects Through Contracts and Grants: A Rationale*, 19 Am. U. L. Rev. 423 (1970).

Therefore, even under an interpretation of the regulations which removes Tufts from the scope of participants in a Federal project, Tufts is included in the scope of the Act as a contractor of HEW and Parlane is entitled to relocation assistance.

Conclusion.

For these reasons, a writ of certiorari should issue to review the judgment and opinion of the United States Court of Appeals for the First Circuit.

Respectfully submitted,

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Appendix A.

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

PARLANE SPORTSWEAR COMPANY, INC.,
PLAINTIFF,
v.
CASPER WEINBERGER, AS HE IS SECRETARY OF HEALTH, EDUCATION AND WELFARE
AND
TRUSTEES OF TUFTS COLLEGE, A/K/A TUFTS UNIVERSITY,
DEFENDANTS.

CIVIL ACTION No. 74-375-C

MEMORANDUM OF DECISION

The plaintiff, in order to operate its clothing manufacturing business, had been leasing several floors of a building belonging to Tufts University (Tufts), which is a privately owned and operated educational institution in Massachusetts. Tufts applied for and was awarded grants of more than one million dollars by appropriate representatives of the Secretary of the Department of Health, Education and Welfare (HEW) in order that Tufts might establish and conduct a Cancer Research Center.

Upon receipt of such grant, Tufts decided that the facilities then occupied by the plaintiff would be needed in order to provide adequate housing for the cancer research project, and Tufts thereupon ordered the plaintiff to vacate such premises, the term of the lease previously having expired. Eviction proceedings are currently in progress, and the mandatory move to new quarters will understandably result in expense to the plaintiff.

The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. § 4601 *et seq.* (the Act), provides for payments by the United States Government to compensate persons required to vacate premises needed for certain federally financed projects. The plaintiff contends that it is entitled to such compensation, and it applied accordingly to HEW. Upon being refused by that agency, the plaintiff seeks in this action a declaratory judgment that it is entitled to relocation assistance as provided in the Act. Defendants Tufts and HEW have countered with motion to dismiss on the ground that the Act does not benefit the plaintiff under the circumstances here concerned. For reasons hereinafter set forth, the plaintiff's motion for summary judgment will be denied and the defendants' motions to dismiss granted.

It is clear from a reading of the Act that the plaintiff would have been entitled to certain payments to help cover the costs of relocation if its eviction had stemmed from the need of a Federal agency to use the property for one of its own projects. It is equally evident that similar compensation would be payable if the plaintiff had been displaced by an agency of the Commonwealth of Massachusetts in order to accommodate one of its projects for which it was receiving Federal financial assistance. Here, the evicting agency is a non-governmental entity that wants the premises in order to carry out a program of its own that is financed by a Federal grant. The issue is whether the Act provides relocation assistance to a business that is evicted under these circumstances.

The policy of Congress in enacting the legislation here concerned is set out in 42 U.S.C. § 4621:

> "The purpose of this subchapter is to establish a uniform policy for the fair and equitable treatment of persons displaced as a result of Federal and federally assisted programs in order that such persons shall not suffer disproportionate injuries as a result of programs designed for the benefit of the public as a whole."

Such a declaration expresses a clear intention to assist *all* persons displaced because of the need to accommodate federally financed programs, whether such programs are conducted by the Federal Government, an agency of a State, or a private institution. This intent is again manifested in § 4601(6) which defines "displaced persons," which are the target beneficiaries of the legislation, as being ". . . any person who . . . moves from real property . . . as the result of the written order of the acquiring agency to vacate real property [,] for a program or project undertaken by a Federal agency, or with Federal financial assistance; . . . ." According to § 4601(4) " 'Federal financial assistance' means a grant, loan, or contribution provided by the United States, ..."

Unfortunately for the plaintiff, the broad expression of congressional intention to compensate *all* persons displaced by federally funded projects is much more narrowly implemented in the operational sections of the Act.

Sections 4622, 4627 and 4628 direct that displacement payments be made when the real property is acquired ". . . for a program or project undertaken by a Federal agency".[1]

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[1] Section 4622(c) reads as follows:

"(a) Whenever the acquisition of real property for a program or project undertaken by a Federal agency in any State will result in the displacement of any person on or after January 2, 1971, the head of such agency shall make a payment to any displaced person, upon proper application as approved by such agency head, for—

(1) actual reasonable expenses in moving himself, his family, business, farm operation, or other personal property;

(2) actual direct losses of tangible personal property as a result of moving or discontinuing a business or farm operation,

Relief for persons displaced by action of a State agency that is seeking a grant or contract "under which Federal financial assistance will be available," is contained in § 4630. It requires the head of a Federal agency to refrain from approving a grant to a State unless he receives satisfactory assurance that the relocation payments provided for by the Act will be accorded.

Nowhere in the statute is there any operational provision calling for payments to a person, such as the plaintiff, who is displaced by a private entity that has a grant of Federal financial assistance for its project. On the

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but not to exceed an amount equal to the reasonable expenses that would have been required to relocate such property, as determined by the head of the agency; and

(3) actual reasonable expenses in searching for a replacement business or farm."

Subsections (b) and (c) prescribe the amounts of the payments to be made.

"§ 4627. State required to furnish real property incident to Federal assistance (local cooperation)

Whenever real property is acquired by a State agency and furnished as a required contribution incident to a Federal program or project, the Federal agency having authority over the program or project may not accept such property unless such State agency has made all payments and provided all assistance and assurances, as are required of a State agency by sections 4630 and 4655 of this title. Such State agency shall pay the cost of such requirements in the same manner and to the same extent as the real property acquired for such project, except that in the case of any real property acquisition or displacement occurring prior to July 1, 1972, such Federal agency shall pay 100 per centum of the first $25,000 of the cost of providing such payments and assistance."

"§ 4628. State acting as agent for Federal program.

Whenever real property is acquired by a State agency at the request of a Federal agency for a Federal program or project, such acquisition shall, for the purposes of this chapter, be deemed an acquisition by the Federal agency having authority over such program or project."

contrary, the wording of the statute appears to assume that all "displaced persons" covered by the Act are evicted either because of projects of Federal agencies or because of projects by State agencies receiving Federal financial assistance. For example:

(a) Section 4633(a) provides that the heads of Federal agencies concerned with Federal projects "or . . . projects by State agencies receiving Federal financial assistance," shall consult together toward the implementation of regulations and procedures for relocation assistance.

(b) Section 4633(b)(43) provides that any complaints with respect to eligibility determinations or payments of relocation assistance shall be reviewed ". . . by the head of the Federal agency having authority over the applicable program or project, or in the case of a program or project receiving Federal financial assistance, by the head of the State agency."

(c) Section 4625(b) requires that "Federal agencies administering programs which may be of assistance to displaced persons covered by this chapter shall cooperate to the maximum extent feasible with the Federal or State agency causing the displacement to insure that such displaced persons receive the maximum assistance available to them."

This same concept that would limit the coverage of the Act to persons evicted because of projects operated by Federal or State governmental entities is expressed in the legislative history. House Report No. 91-1656, 91 Cong., 2d Sess. (1970), U.S. Cong. & Admin. News, 5850, 5853, refers to the term "displaced person" to mean any person required to vacate property "for a program or project undertaken by a Federal agency, or by a State agency with Federal financial assistance."

The plaintiff is no less injured by the fact that the entity that brings about its eviction is a private institu-

tion, rather than a State or Federal agency. However, in the absence of an operational provision in the Act authorizing payment to a person in the position of the plaintiff, I do not see how the Secretary of HEW would be justified in allowing the plaintiff's claim. This case points up the need for corrective legislation if the generous intention expressed by Congress in the Act is to be given full implementation.

By separate judgment filed contemporaneously herewith, the plaintiff's motion for summary judgment will be denied and the motions of the defendants that the action be dismissed will be granted.

DATED: August 29, 1974.

WILLIAM P. GRAY,
United States District Judge,
Central District of California,
sitting in the District of
Massachusetts by designation.

Appendix B.

United States Court of Appeals for the First Circuit.

No. 74-1411

PARLANE SPORTSWEAR COMPANY, INC.,
PLAINTIFF, APPELLANT,
v.
CASPAR WEINBERGER, ET AL.,
DEFENDANTS, APPELLEES.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS
[381 F. Supp. 411]

Before ALDRICH, MCENTEE and CAMPBELL,
Circuit Judges.

Evan T. Lawson, with whom *Judith E. Turtz* and *Lawson & Wayne* were on brief, for appellant.

Patrick F. Brady, with whom *Nutter, McClennen & Fish* was on brief, for Trustees of Tuft's College, appellee.

Marshall D. Stein, Assistant United States Attorney, with whom *James N. Gabriel*, United States Attorney, was on brief, for Casper Weinberger, appellee.

April 17, 1975

McEntee, *Circuit Judge.* Plaintiff Parlane had manufactured women's sportwear at 57 Kneeland Street in Boston since 1959. In 1969 Tufts University purchased the building but continued to lease the premises to Parlane. In 1971 and 1972 the National Institutes of Health, a subsidiary division of HEW, awarded substantial grants to Tufts under 42 U.S.C. §§ 281 *et seq.* and §§ 291 *et seq.* for personnel, equipment, alterations and renovations to expand Tufts' medical teaching facilities and to establish a Cancer Research Center. Upon receipt of the grants Tufts undertook to evict Parlane from 57 Kneeland Street in order to use the space occupied by Parlane, whose lease had expired, to fulfill the purpose of the grants. By agreement Parlane vacated one of the three floors it occupied, and in May 1973 Tufts obtained a judgment for possession of the two remaining floors and is currently occupying them for purposes of the grants.

In August 1971 Parlane first sought relocation assistance from HEW under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. §§ 4601 *et seq.*, but was refused such aid. It then sought a judicial declaration that it was entitled to benefits under the Act but the court dismissed its complaint and Parlane appeals.

The statute extends assistance to persons displaced by the acquisition of real property "for a program or project undertaken by a Federal agency," 42 U.S.C. § 4622(a). HEW's regulations refer to "direct projects of the Department," 45 C.F.R. § 15.5(a), and deny aid to persons displaced by federally assisted projects of private entities,

45 C.F.R. § 15.6.[1] We find no compelling indications that HEW's contemporaneous construction of the statute is wrong. *New York Dept. of Social Services* v. *Dublino,* 413 U.S. 405, 421 (1973). The committee report states that the statute is aimed at alleviating the hardships of displacement for "public works projects" and "public improvement programs," H.R. Rep. No. 1656, 91st Cong., 2d Sess. (1970), *reprinted in* 1970 U.S. Code Cong. & Ad. News 5850, 5851-52; and none of the examples furnished therein (highways, reservoirs, public buildings, facilities or services, urban renewal projects, hospitals), approximate the arrangement here, which Tufts initiated and administers. *Cf. Wahba* v. *New York University,* 492 F.2d 96, 100 & n. 3 (2d Cir. 1974). Parlane contends that the phrase "federal financial assistance" appearing in the statutory definition of displaced persons, § 4601(b), and statement of policy, § 4621, demonstrates an intent to include all such projects. But we are satisfied, especially

[1] More than a year after rejecting Parlane's application HEW amended its regulations to except from this denial private entities acting as agents or contractors of the Department. 45 C.F.R. § 15.6 (1974). The regulation unfortunately leaves these terms undefined. The term "contractor" may sometimes signify any party to a contract (although there is some indication that HEW may regard the grant as a " conditional gift," *see Wahba* v. *New York University,* 492 F.2d 96, 100 (2d Cir. 1974)), but here it was seemingly used in a sense similar to that in the Miller Act, 40 U.S.C. § 270a(a) (1970), to signify a person awarded a construction or repair contract for a public building or public work. The committee report indicates, H.R. Rep. No. 1656, 91st Cong., 2d Sess. (1970), *reprinted* in 1970 U.S. Code Cong. & Ad. News 5850, 5853-54, that it is inmmaterial that a private person actually acquires, builds or holds title to the site if the facility "serves the public and is regarded by the public as a public building." We think the regulation's exception is addressed to such a situation and is inapplicable here. Compare the definition of "agent" in 42 U.S.C. § 4628.

in light of the committee report, that this phrase was intended to cover only such assistance to State agencies. *See* H.R. Rep. No. 1656, *supra* at 5853, 5865. *Finally,* Representative Ryan criticized the Act shortly before it was enacted because it "does not cover displacement arising from construction by private institutions — such as schools and hospitals — even though they, too, may be receiving federal financial assistance," 116 Cong. Rec. 41254-55 (1970); his own bill, H.R. 609, 91st Cong., 2d Sess. (1970), which would have covered such displacement, was allowed to die in committee. Although statements of opponents of a bill may not be authoritative, they are nevertheless relevant and useful, especially where the proponents make no response to the opponents' criticisms.[2] *Arizona* v. *California,* 373 U.S. 546, 583 n. 85 (1963).

We might add that the interpretations sought for by appellant could lead to many difficult situations, if, for example, the federal assistance was merely supplementary to the grantee's own funds and contributions.

Affirmed.

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[2] Parlane cites language in a committee report made three years after enactment to the effect that HEW's failure to provide relocation assistance to it violated the original intent of the Act, H.R. Rep. No. 747, 93d Cong., 1st Sess. 2 (1973) but the views of one Congress as to the meaning of statutes enacted by an earlier Congress are entitled to little if any weight. *United States* v. *Southwestern Cable Co.,* 392 U.S. 157, 170 (1968).

Appendix C.

Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970. 42 U.S.C. §§ 4601 *et seq.*

SUBCHAPTER I.--GENERAL PROVISIONS.

§ 4601. [Definitions.]

As used in this chapter—

(1) The term "Federal agency" means any department, agency, or instrumentality in the executive branch of the Government (except the National Capital Housing Authority), any wholly owned Government corporation (except the District of Columbia Redevelopment Land Agency), and the Architect of the Capitol, the Federal Reserve banks and branches thereof.

(2) The term "State" means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, the Trust Territory of the Pacific Islands, and any political subdivision thereof.

(3) The term "State agency" means the National Capital Housing Authority, the District of Columbia Redevelopment Land Agency, and any department, agency, or instrumentality of a State or of a political subdivision of a State, or any department, agency, or instrumentality of two or more States or of two or more political subdivisions of a State or States.

(4) The term "Federal financial assistance" means a grant, loan, or contribution provided by the United States, except any Federal guarantee or insurance and any annual payment or capital loan to the District of Columbia.

(5) The term "person" means any individual, partnership, corporation, or association.

(6) The term "displaced person" means any person who, on or after January 2, 1971, moves from real property, or moves his personal property from real property, as a result of the acquisition of such real property, in whole or in part, or as the result of the written order of the acquiring agency to vacate real property, for a program or project undertaken by a Federal agency, or with Federal financial assistance; and solely for the purposes of sections 4622(a) and (b) and 4625 of this title, as a result of the acquisition of or as the result of the written order of the acquiring agency to vacate other real property, on which such person conducts a business or farm operation, for such program or project.

(7) The term "business" means any lawful activity, excepting a farm operation, conducted primarily—

(A) for the purchase, sale, lease and rental of personal and real property, and for the manufacture, processing, or marketing of products, commodities, or any other personal property;

(B) for the sale of services to the public;

(C) by a nonprofit organization; or

(D) solely for the purposes of section 4622(a) of this title, for assisting in the purchase, sale, resale, manufacture, processing, or marketing of products, commodities, personal property, or services by the erection and maintenance of an outdoor advertising display or displays, whether or not such display or displays are located on the premises on which any of the above activities are conducted.

(8) The term "farm operation" means any activity conducted solely or primarily for the production of one or more agricultural products or commodities, including timber, for sale or home use, and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator's support.

(9) The term "mortgage" means such classes of liens as are commonly given to secure advances on, or the unpaid purchase price of, real property, under the laws of the State in which the real property is located, together with the credit instruments, if any, secured thereby.

§ 4602. [Effect upon property acquisition.]

(a) The provisions of section 4651 of this title create no rights or liabilities and shall not affect the validity of any property acquisitions by purchase or condemnation.

(b) Nothing in this chapter shall be construed as creating in any condemnation proceedings brought under the power of eminent domain, any element of value or of damage not in existence immediately prior to January 2, 1971.

SUBCHAPTER II.—UNIFORM RELOCATION ASSISTANCE.

§ 4621. [Declaration of policy.]

The purpose of this subchapter is to establish a uniform policy for the fair and equitable treatment of persons displaced as a result of Federal and federally assisted programs in order that such persons shall not suffer disproportionate injuries as a result of programs designed for the benefit of the public as a whole.

§ 4622. [Moving and related expenses—General provision.]

(a) Whenever the acquisition of real property for a program or project undertaken by a Federal agency in any State will result in the displacement of any person on or after January 2, 1971, the head of such agency shall make a payment to any displaced person, upon proper application as approved by such agency head, for—

(1) actual reasonable expenses in moving himself, his family, business, farm operation, or other personal property;

(2) actual direct losses of tangible personal property as a result of moving or discontinuing a business or farm operation, but not to exceed an amount equal to the reasonable expenses that would have been required to relocate such property, as determined by the head of the agency; and

(3) actual reasonable expenses in searching for a replacement business or farm.

Displacement from dwelling; election of payments; moving expense and dislocation allowance

(b) Any displaced person eligible for payments under subsection (a) of this section who is displaced from a dwelling and who elects to accept the payments authorized by this subsection in lieu of the payments authorized by subsection (a) of this section may receive a moving expense allowance, determined according to a schedule established by the head of the Federal agency, not to exceed $300; and a dislocation allowance of $200.

Displacement from business or farm operation; election of payments; limitations; eligibility for business payments; "average annual net earnings" defined

(c) Any displaced person eligible for payments under subsection (a) of this section who is displaced from his place of business or from his farm operation and who elects to accept the payment authorized by this subsection in lieu of the payment authorized by subsection (a) of this section, may receive a fixed payment in an amount equal to the average annual net earnings of the business or farm operation, except that such payment shall be not less than $2,500 nor more than $10,000. In the case of a business no payment shall be made under this subsection unless the head of the Federal agency is satisfied that the business (1) cannot be relocated without

a substantial loss of its existing patronage, and (2) is not a part of a commercial enterprise having at least one other establishment not being acquired by the United States, which is engaged in the same or similar business. For purposes of this subsection, the term "average annual net earnings" means one-half of any net earnings of the business or farm operation, before Federal, State, and local income taxes, during the two taxable years immediately preceding the taxable year in which such business or farm operation moves from the real property acquired for such project, or during such other period as the head of such agency determines to be more equitable for establishing such earnings, and includes any compensation paid by the business or farm operation to the owner, his spouse, or his dependents during such period.

§ 4623. [Replacement housing for homeowner; mortgage insurance.]

(a)(1) In addition to payments otherwise authorized by this subchapter, the head of the Federal agency shall make an additional payment not in excess of $15,000 to any displaced person who is displaced from a dwelling actually owned and occupied by such displaced person for not less than one hundred and eighty days prior to the initiation of negotiations for the acquisition of the property. Such additional payment shall include the following elements:

(A) The amount, if any, which when added to the acquisition cost of the dwelling acquired by the Federal agency, equals the reasonable cost of a comparable replacement dwelling which is a decent, safe, and sanitary dwelling adequate to accommodate such displaced person, reasonably accessible to public services and places of employment and available on the private market. All determinations required to carry out this subparagraph shall be made in accordance with standards established by the head of the Federal agency making the additional payment.

(B) The amount, if any, which will compensate such displaced person for any increased interest costs which such person is required to pay for financing the acquisition of any such comparable replacement dwelling. Such amount shall be paid only if the dwelling acquired by the Federal agency was encumbered by a bona fide mortgage which was a valid lien on such

dwelling for not less than one hundred and eighty days prior to the initiation of negotiations for the acquisition of such dwelling. Such amount shall be equal to the excess in the aggregate interest and other debt service costs of that amount of the principal of the mortgage on the replacement dwelling which is equal to the unpaid balance of the mortgage on the acquired dwelling, over the remainder term of the mortgage on the acquired dwelling, reduced to discounted present value. The discount rate shall be the prevailing interest rate paid on savings deposits by commercial banks in the general area in which the replacement dwelling is located.

(C) Reasonable expenses incurred by such displaced person for evidence of title, recording fees, and other closing costs incident to the purchase of the replacement dwelling, but not including prepaid expenses.

(2) The additional payment authorized by this subsection shall be made only to such a displaced person who purchases and occupies a replacement dwelling which is decent, safe, and sanitary not later than the end of the one year period beginning on the date on which he receives from the Federal agency final payment of all costs of the acquired dwelling, or on the date on which he moves from the acquired dwelling, whichever is the later date.

(b) The head of any Federal agency may, upon application by a mortgagee, insure any mortgage (including advances during construction) on a comparable replacement dwelling executed by a displaced person assisted under this section, which mortgage is eligible for insurance under any Federal law administered by such agency notwithstanding any requirements under such law relating to age, physical condition, or other personal characteristics of eligible mortgagors, and may make commitments for the insurance of such mortgage prior to the date of execution of the mortgage.

§ 4624. [Replacement housing for tenants and certain others.]

In addition to amounts otherwise authorized by this subchapter, the head of the Federal agency shall make a payment to or for any displaced person displaced from any dwelling not eligible to receive a payment under section 4623 of this title which dwelling was actually and lawfully occupied by such displaced person for not less than ninety days prior to the initiation of negotiations for acquisition of such dwelling. Such payment shall be either—

(1) the amount necessary to enable such displaced person to lease or rent for a period not to exceed four years, a decent, safe, and sanitary dwelling of standards adequate to accommodate such person in areas not generally less desirable in regard to public utilities and public and commercial facilities, and reasonably accessible to his place of employment, but not to exceed $4,000, or

(2) the amount necessary to enable such person to make a downpayment (including incidental expenses described in section 4623 (a)(1)(C) of this title) on the purchase of a decent, safe, and sanitary dwelling of standards adequate to accommodate such person in areas not generally less desirable in regard to public utilities and public and commercial facilities, but not to exceed $4,000, except that if such amount exceeds $2,000, such person must equally match any such amount in excess of $2,000, in making the downpayment.

§ 4625. [Relocation assistance advisory services—Program for displaced persons and economically injured occupants of adjacent property.]

(a) Whenever the acquisition of real property for a program or project undertaken by a Federal agency in any State will result in the displacement of any person on or after January 2, 1971, the head of such agency shall provide a relocation assistance advisory program for displaced persons which shall offer the services described in subsection (c) of this section. If such agency head determines that any person occupying property immediately adjacent to the real property acquired is caused substantial economic injury because of the acquisition, he may offer such person relocation advisory services under such program.

Cooperation between assisting and displacing agencies to assure maximum assistance

(b) Federal agencies administering programs which may be of assistance to displaced persons covered by this chapter shall cooperate to the maximum extent feasible with the Federal or State agency causing the displacement to assure that such displaced persons receive the maximum assistance available to them.

Measures, facilities, or services; description

(c) Each relocation assistance advisory program required by subsection (a) of this section shall include such measures, facilities, or services as may be necessary or appropriate in order to—

(1) determine the need, if any, of displaced persons, for relocation assistance;

(2) provide current and continuing information on the availability, prices, and rentals, of comparable decent, safe, and sanitary sales and rental housing, and of comparable commercial properties and locations for displaced businesses;

(3) assure that, within a reasonable period of time, prior to displacement there will be available in areas not generally less desirable in regard to public utilities and public and commercial facilities and at rents or prices within the financial means of the families and individuals displaced, decent, safe, and sanitary

dwellings, as defined by such Federal agency head, equal in number to the number of and available to such displaced persons who require such dwellings and reasonably accessible to their places of employment, except that the head of that Federal agency may prescribe by regulation situations when such assurances may be waived;

(4) assist a displaced person displaced from his business or farm operation in obtaining and becoming established in a suitable replacement location;

(5) supply information concerning Federal and State housing programs, disaster loan programs, and other Federal or State programs offering assistance to displaced persons; and

(6) provide other advisory services to displaced persons in order to minimize hardships to such persons in adjusting to relocation.

Coordination of relocation activities with project work and governmental actions in the community or nearby areas affecting carrying out relocation assistance programs

(d) The heads of Federal agencies shall coordinate relocation activities with project work, and other planned or proposed governmental actions in the community or nearby areas which may affect the carrying out of relocation assistance programs.

§ 4626. [Housing replacement by Federal agency as last resort.]

(a) If a Federal project cannot proceed to actual construction because comparable replacement sale or rental housing is not available, and the head of the Federal agency determines that such housing cannot otherwise be made available he may take such action as is necessary or appropriate to provide such housing by use of funds authorized for such project.

(b) No person shall be required to move from his dwelling on or after January 2, 1971, on account of any Federal project, unless the Federal agency head is satisfied that replacement housing, in accordance with section 4625(c)(3) of this title, is available to such person.

§ 4627. [State required to furnish real property incident to Federal assistance (local cooperation).]

Whenever real property is acquired by a State agency and furnished as a required contribution incident to a Federal program or project, the Federal agency having authority over the program or project may not accept such property unless such State agency has made all payments and provided all assistance and assurances, as are required of a State agency by sections 4630 and 4655 of this title. Such State agency shall pay the cost of such requirements in the same manner and to the same extent as the real property acquired for such project, except that in the case of any real property acquisition or displacement occurring prior to July 1, 1972, such Federal agency shall pay 100 per centum of the first $25,000 of the cost of providing such payments and assistance.

§ 4628. [State acting as agent for Federal program.]

Whenever real property is acquired by a State agency at the request of a Federal agency for a Federal program or project, such acquisition shall, for the purposes of this chapter, be deemed an acquisition by the Federal agency having authority over such program or project.

§ 4629. [Public works programs and projects of District of Columbia government and Washington Metropolitan Area Transit Authority.]

Whenever real property is acquired by the government of the District of Columbia or the Washington Metropolitan Area Transit Authority for a program or project which is not subject to sections 4630 and 4631 of this title, and such acquisition will result in the displacement of any person on or after January 2, 1971, the Commissioner of the District of Columbia or the Washington Metropolitan Area Transit Authority, as the case may be, shall make all relocation payments and provide all assistance required of a Federal agency by this chapter. Whenever real property is acquired for such a program or project on or after January 2, 1971, such Commissioner or Authority, as the case may be, shall make all payments and meet all requirements prescribed for a Federal agency by subchapter III of this chapter.

§ 4630. [Requirements for relocation payments and assistance of Federally assisted program; assurances of availability of housing.]

Notwithstanding any other law, the head of a Federal agency shall not approve any grant to, or contract or agreement with, a State agency, under which Federal financial assistance will be available to pay all or part of the cost of any program or project which will result in the displacement of any person on or after January 2, 1971, unless he receives satisfactory assurances from such State agency that—

(1) fair and reasonable relocation payments and assistance shall be provided to or for displaced persons, as are required to be provided by a Federal agency under sections 4622, 4623, and 4624 of this title;

(2) relocation assistance programs offering the services described in section 4625 of this title shall be provided to such displaced persons;

(3) within a reasonable period of time prior to displacement, decent, safe, and sanitary replacement dwellings will be available to displaced persons in accordance with section 4625(c)(3) of this title.

§ 4631. [Federal share of costs.]

(a) The cost to a State agency of providing payments and assistance pursuant to sections 4626, 4630, 4635, and 4655 of this title, shall be included as part of the cost of a program or project for which Federal financial assistance is available to such State agency, and such State agency shall be eligible for Federal financial assistance with respect to such payments and assistance in the same manner and to the same extent as other program or project costs, except that, notwithstanding any other law in the case where the Federal financial assistance is by grant or contribution the Federal agency shall pay the full amount of the first $25,000 of the cost to a State agency of providing payments and assistance for a displaced person under sections 4626, 4630, 4635, and 4655 of this title, on account of any acquisition or displacement occurring prior to July 1, 1972, and in any case where such Federal financial assistance is by loan, the Federal agency shall loan such State agency the full amount of the first $25,000 of such cost.

(b) No payment or assistance under section 4630 or 4655 of this title shall be required or included as a program or project cost under this section, if the displaced person receives a payment required by the State law of eminent domain which is determined by such Federal agency head to have substantially the same purpose and effect as such payment under this section, and to be part of the cost of the program or project for which Federal financial assistance is available.

(c) Any grant to, or contract or agreement with, a State agency executed before January 2, 1971, under which Federal financial assistance is available to pay all or part of the cost of any program or project which will result in the displacement of any person on or after January 2, 1971, shall be amended to include the cost of providing payments and services under sections 4630 and 4655 of this title. If the head of a Federal agency determines that it is necessary for the expeditious completion of a program or project he may advance to the State agency the Federal share of the cost of any payments or assistance by such State agency pursuant to sections 4626, 4630, 4635, and 4655 of this title.

§ 4632. [Administration; relocation assistance in programs receiving Federal financial assistance.]

In order to prevent unnecessary expenses and duplications of functions, and to promote uniform and effective administration of relocation assistance programs for displaced persons under sections 4626, 4630, and 4635 of this title, a State agency may enter into contracts with any individual, firm, association, or corporation for services in connection with such programs, or may carry out its functions under this subchapter through any Federal or State governmental agency or instrumentality having an established organization for conducting relocation assistance programs. Such State agency shall, in carrying out the relocation assistance activities described in section 4626 of this title, whenever practicable, utilize the services of State or local housing agencies, or other agencies having experience in the administration or conduct of similar housing assistance activities.

§ 4633. [Regulations and procedures.]

(a) In order to promote uniform and effective administration of relocation assistance and land acquisition of State or local housing agencies, or other agencies having programs or projects by Federal agencies or programs or projects by State agencies receiving Federal financial assistance, the heads of Federal agencies shall consult together on the establishment of regulations and procedures for the implementation of such programs.

(b) The head of each Federal agency is authorized to establish such regulations and procedures as he may determine to be necessary to assure—

(1) that the payments and assistance authorized by this chapter shall be administered in a manner which is fair and reasonable, and as uniform as practicable;

(2) that a displaced person who makes proper application for a payment authorized for such person by this subchapter shall be paid promptly after a move or, in hardship cases, be paid in advance; and

(3) that any person aggrieved by a determination as to eligibility for a payment authorized by this chapter, or the amount of a payment, may have his application reviewed by the head of the Federal agency having authority over the applicable program or project, or in the case of a program or project receiving Federal financial assistance, by the head of the State agency.

(c) The head of each Federal agency may prescribe such other regulations and procedures, consistent with the provisions of this chapter, as he deems necessary or appropriate to carry out this chapter.

§ 4634. [Annual report to President; Presidential report to Congress.]

The head of each Federal agency shall prepare and submit an annual report to the President on the activities of such agency with respect to the programs and policies established or authorized by this chapter, and the President shall submit such reports to the Congress not later than January 15 of each year, beginning January 15, 1972, and ending January 15, 1975, together with his comments or recommendations. Such reports shall give special attention to: (1) the effectiveness of the provisions of this chapter assuring the availability of comparable replacement housing, which is decent, safe, and sanitary, for displaced homeowners and tenants; (2) actions taken by the agency to achieve the objectives of the policies of Congress, declared in this chapter, to provide uniform and equal treatment, to the greatest extent practicable, for all persons displaced by, or having real property taken for, Federal or federally assisted programs; (3) the views of the Federal agency head on the progress made to achieve such objectives in the various programs conducted or administered by such agency, and among the Federal agencies; (4) any indicated effects of such programs and policies on the public; and (5) any recommendations he may have for further improvements in relocation assistance and land acquisition programs, policies, and implementing laws and regulations.

§ 4635. [Planning and other preliminary expenses for additional housing.]

In order to encourage and facilitate the construction or rehabilitation of housing to meet the needs of displaced persons who are displaced from dwellings because of any Federal or Federal financially assisted project, the head of the Federal agency administering such project is authorized to make loans as a part of the cost of any such project, or to approve loans as a part of the cost of any such project receiving Federal financial assistance, to nonprofit, limited dividend, or cooperative organizations or to public bodies, for necessary and reasonable expenses, prior to construction, for planning and obtaining federally insured mortgage financing for the rehabilitation or construction of housing for such displaced persons. Notwithstanding the preceding sentence, or any other law, such loans shall be available for not to exceed 80 per centum of the reasonable costs expected to be incurred in planning, and in obtaining financing for, such housing, prior to the availability of such financing, including, but not limited to, preliminary surveys and analyses of market needs, preliminary site engineering, preliminary architectural fees, site acquisition, application and mortgage commitment fees, and construction loan fees and discounts. Loans to an organization established for profit shall bear interest at a market rate established by the head of such Federal agency. All other loans shall be without interest. Such Federal agency head shall require repayment of loans made under this section, under such terms and conditions as he may require, upon completion of the project or sooner, and except in the case of a loan to an organization established for profit, may cancel any part or all of a loan if he determines that a permanent loan to finance the rehabilitation or the construction of such housing cannot be obtained in an amount adequate for repayment of such loan. Upon repayment of any such loan, the Federal share of the sum repaid shall be credited to the account from which such loan was made, unless the Secretary of the Treasury determines that such account is no longer in existence, in which case such sum shall be returned to the Treasury and credited to miscellaneous receipts.

§ 4636. [Payments not to be considered as income for revenue purposes or for eligibility for assistance under Social Security Act or other Federal law.]

No payment received under this subchapter shall be considered as income for the purposes of Title 26; or for the purposes of determining the eligibility or the extent of eligibility of any person for assistance under the Social Security Act or any other Federal law.

§ 4637. [Displacement by code enforcement, rehabilitation, and demolition programs receiving Federal assistance.]

A person who moves or discontinues his business, or moves other personal property, or moves from his dwelling on or after January 2, 1971, as a direct result of any project or program which receives Federal financial assistance under title I of the Housing Act of 1949, as amended, or as a result of carrying out a comprehensive city demonstration program under title I of the Demonstration Cities and Metropolitan Development Act of 1966 shall, for the purposes of this subchapter, be deemed to have been displaced as the result of the acquisition of real property.

§ 4638. [Transfers of surplus property.]

The Administrator of General Services is aut' rized to transfer to a State agency for the purpose of providing replacement housing required by this subchapter, any real property surplus to the needs of the United States within the meaning of the Federal Property and Administrative Services Act of 1949, as amended. Such transfer shall be subject to such terms and conditions as the Administrator determines necessary to protect the interests of the United States and may be made without monetary consideration, except that such State agency shall pay to the United States all amounts received by such agency from any sale, lease, or other disposition of such property for such housing.

SUBCHAPTER III.—UNIFORM REAL PROPERTY ACQUISITION POLICY.

§ 4651. [Uniform policy on real property acquisition practices.]

In order to encourage and expedite the acquisition of real property by agreements with owners, to avoid litigation and relieve congestion in the courts, to assure consistent treatment for owners in the many Federal programs, and to promote public confidence in Federal land acquisition practices, heads of Federal agencies shall, to the greatest extent practicable, be guided by the following policies:

(1) The head of a Federal agency shall make every reasonable effort to acquire expeditiously real property by negotiation.

(2) Real property shall be appraised before the initiation of negotiations, and the owner or his designated representative shall be given an opportunity to accompany the appraiser during his inspection of the property.

(3) Before the initiation of negotiations for real property, the head of the Federal agency concerned shall establish an amount which he believes to be just compensation therefor and shall make a prompt offer to acquire the property for the full amount so established. In no event shall such amount be less than the agency's approved appraisal of the fair market value of such property. Any decrease or increase in the fair market value of real property prior to the date of valuation caused by the public improvement for which such property is acquired, or by the likelihood that the property would be acquired for such improvement, other than that due to physical deterioration within the reasonable control of the owner, will be disregarded in determining the compensation for the property. The head of the Federal agency concerned shall provide the owner of real property to be acquired with a written statement of, and summary of the basis for, the amount he established as just compensation. Where appropriate the just compensation for the real property acquired and for damages to remaining real property shall be separately stated.

(4) No owner shall be required to surrender possession of real property before the head of the Federal agency concerned pays the agreed purchase price, or deposits with the court in accordance with section 258a of Title 40, for the benefit of the owner, an amount not less than the agency's approved appraisal of the fair market value of such property, or the amount of the award of compensation in the condemnation proceeding for such property.

(5) The construction or development of a public improvement shall be so scheduled that, to the greatest extent practicable, no person lawfully occupying real property shall be required to move from a dwelling (assuming a replacement dwelling as required by subchapter II of this chapter will be available), or to move his business or farm operation, without at least ninety days' written notice from the head of the Federal agency concerned, of the date by which such move is required.

(6) If the head of a Federal agency permits an owner or tenant to occupy the real property acquired on a rental basis for a short term or for a period subject to termination by the Government on short notice, the amount of rent required shall not exceed the fair rental value of the property to a short-term occupier.

(7) In no event shall the head of a Federal agency either advance the time of condemnation, or defer negotiations or condemnation and the deposit of funds in court for the use of the owner, or take any other action coercive in nature, in order to compel an agreement on the price to be paid for the property.

(8) If any interest in real property is to be acquired by exercise of the power of eminent domain, the head of the Federal agency concerned shall institute formal condemnation proceedings. No Federal agency head shall intentionally make it necessary for an owner to institute legal proceedings to prove the fact of the taking of his real property.

(9) If the acquisition of only part of a property would leave its owner with an uneconomic remnant, the head of the Federal agency concerned shall offer to acquire the entire property.

§ 4652. [Buildings, structures, and improvements.]

(a) Notwithstanding any other provision of law, if the head of a Federal agency acquires any interest in real property in any State, he shall acquire at least an equal interest in all buildings, structures, or other improvements located upon the real property so acquired and which he requires to be removed from such real property or which he determines will be adversely affected by the use to which such real property will be put.

(b)(1) For the purpose of determining the just compensation to be paid for any building, structure, or other improvement required to be acquired by subsection (a) of this section, such building, structure, or other improvement shall be deemed to be a part of the real property to be acquired notwithstanding the right or obligation of a tenant, as against the owner of any other interest in the real property, to remove such building, structure, or improvement at the expiration of his term, and the fair market value which such building, structure, or improvement contributes to the fair market value of the real property to be acquired, or the fair market value of such building, structure, or improvement for removal from the real property, whichever is the greater, shall be paid to the tenant therefor.

(2) Payment under this subsection shall not result in duplication of any payments otherwise authorized by law. No such payment shall be made unless the owner of the land involved disclaims all interest in the improvements of the tenant. In consideration for any such payment, the tenant shall assign, transfer, and release to the United States all his right, title, and interest in and to such improvements. Nothing in this subsection shall be construed to deprive the tenant of any rights to reject payment under this subsection and to obtain payment for such property interests in accordance with applicable law, other than this subsection.

§ 4653. [Expenses incidental to transfer of title to United States.]

The head of a Federal agency, as soon as practicable after the date of payment of the purchase price or the date of deposit in court of funds to satisfy the award of compensation in a condemnation proceeding to acquire real property, whichever is the earlier, shall reimburse the owner, to the extent the head of such agency deems fair and reasonable, for expenses he necessarily incurred for—

(1) recording fees, transfer taxes, and similar expenses incidental to conveying such real property to the United States;

(2) penalty costs for prepayment of any preexisting recorded mortgage entered into in good faith encumbering such real property; and

(3) the pro rata portion of real property taxes paid which are allocable to a period subsequent to the date of vesting title in the United States, or the effective date of possession of such real property by the United States, whichever is the earlier.

§ 4654. [Litigation expenses.]

(a) The Federal court having jurisdiction of a proceeding instituted by a Federal agency to acquire real property by condemnation shall award the owner of any right, or title to, or interest in, such real property such sum as will in the opinion of the court reimburse such owner for his reasonable costs, disbursements, and expenses, including reasonable attorney, appraisal, and engineering fees, actually incurred because of the condemnation proceedings, if—

(1) the final judgment is that the Federal agency cannot acquire the real property by condemnation; or

(2) the proceeding is abandoned by the United States.

(b) Any award made pursuant to subsection (a) of this section shall be paid by the head of the Federal agency for whose benefit the condemnation proceedings was instituted.

(c) The court rendering a judgment for the plaintiff in a proceeding brought under section 1346(a)(2) or 1491 of Title 28 awarding compensation for the taking of property by a Federal agency, or the Attorney General effecting a settlement of any such proceeding, shall determine and award or allow to such plaintiff, as a part of such judgment or settlement, such sum as will in the opinion of the court or the Attorney General reimburse such plaintiff for his reasonable costs, disbursements, and expenses, including reasonable attorney, appraisal, and engineering fees, actually incurred because of such proceeding.

§ 4655. [Requirements for uniform land acquisition policies; payments of expenses incidental to transfer of real property to State; payment of litigation expenses in certain cases.]

Notwithstanding any other law, the head of a Federal agency shall not approve any program or project or any grant to, or contract or agreement with, a State agency under which Federal financial assistance will be available to pay all or part of the cost of any program or project which will result in the acquisition of real property on and after January 2, 1971, unless he receives satisfactory assurances from such State agency that—

(1) in acquiring real property it will be guided, to the greatest extent practicable under State law, by the land acquisition policies in section 4651 of this title and the provisions of section 4652 of this title, and

(2) property owners will be paid or reimbursed for necessary expenses as specified in sections 4653 and 4654 of this title.

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In the Supreme Court of the United States

OCTOBER TERM, 1975

PARLANE SPORTSWEAR CO., INC., PETITIONER

v.

F. DAVID MATHEWS, SECRETARY OF HEALTH, EDUCATION, AND WELFARE, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

MEMORANDUM FOR THE FEDERAL RESPONDENT IN OPPOSITION

ROBERT H. BORK,
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Petitioner contends that it is entitled to relocation assistance under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 84 Stat. 1894, 42 U.S.C. 4601, *et seq.* ("Relocation Assistance Act").

Petitioner, a clothing manufacturer, leased three floors in a building which respondent Tufts University, a private educational institution, acquired in 1969. Tufts was subsequently granted substantial

sums by the National Institutes of Health, an agency of the Department of Health, Education, and Welfare, to expand its teaching facilities and establish a Cancer Research Center. Tufts wanted to use the space leased by petitioner for the cancer project. Since petitioner's lease had expired, Tufts called upon it to vacate; when petitioner refused to do so, Tufts brought eviction proceedings. Tufts recovered possession of all three floors and is currently conducting in them activities for which it had received grants (Pet. App. B, p. 30).

In August 1971, petitioner applied for relocation assistance from HEW under the Relocation Assistance Act. The Secretary determined that petitioner did not qualify for such assistance. Petitioner then brought this action in the United States District Court for the District of Massachusetts seeking a declaration that it was entitled to benefits under the Act. The district court dismissed the action (Pet. App. A, pp. 23-28), and the court of appeals affirmed (Pet. App. B, pp. 29-32; 513 F. 2d 835). Both courts held that the Act does not provide relocation assistance to persons who are displaced by private institutions receiving federal assistance.

The decision of the court of appeals was correct, does not conflict with other decisions (Pet. 5), and is consistent with the language, history and administrative construction of the Relocation Assistance Act.

The operative language of the Act authorizes federal displacement payments only when real property is acquired "for a program or project undertaken by a Federal agency" (42 U.S.C. 4622), "by a State agency and furnished as a required contribution incident to a Federal program or project" (42 U.S.C. 4627), or, "by a State agency at the request of a Federal agency for a Federal program or project" (42 U.S.C. 4628). There is no provision for payments when property is acquired by a private institution, like Tufts, to carry out a project initiated and controlled by it, but for which it receives federal assistance. Accordingly, the Secretary's regulations specify that relocation payments are not available with respect to federally assisted projects of private entities. 45 C.F.R. 15.6. That regulation provides:

> This part does not apply to federally assisted projects of those entities, such as private entities, that do not meet the definition of a State agency in § 15.4(s), except when such an entity is acting as an agent or contractor of a State agency, or of the Department, in the discharge of its responsibilities.

Tufts is not acting as a contractor or agent of the federal government within the meaning of the regulation simply because it received a grant. As the court below held (Pet. App. B, p. 31, n. 1), the regulation is limited to real property acquired at the request of a federal agency, to be used as a public facility in a federal program. Tufts' building re-

mains as much a private facility of the University as when petitioner occupied it.

The court of appeals correctly observed that nothing in the legislative history describing the Act's scope "approximate[s] the arrangement here, which Tufts initiated and administers" (Pet. App. B, p. 31). The House Committee Report referred only to "public works projects" and "public improvement programs" such as public buildings, facilities or services. H.R. Rep. No. 1656, 91st Cong., 2d Sess., pp. 1, 3 (1970). Representative Ryan, speaking on the floor of the House of Representatives, correctly noted (and without contradiction) that the legislation did "not cover displacement arising from construction by private institutions—such as schools and hospitals—even though they too, may be receiving Federal financial assistance." 116 Cong. Rec. 41254 (1970). But his contemporaneous proposal to fill this deliberate omission (H.R. 609, 91st Cong., 1st Sess. (1969)) was not reported out of committee.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

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